

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATION

COMMISSIONER OF EDUCATION

Northern Rhode Island Collaborative

v.

East Providence School Committee

Decision on Motion to Dismiss

Held: The Commissioner is without jurisdiction to determine whether \$563, 214.30 is owed to the Northern Rhode Island Collaborative by the East Providence School Committee. However, documentation filed in this matter indicates that tuition invoices for several East Providence students enrolled at the Collaborative are un-paid, and that, as a result, the Collaborative may disenroll East Providence students placed there under the provisions of their current Individualized Education Programs. Under such circumstances, a “show cause” hearing will be convened to determine if the Commissioner must order the withholding of state aid for tuition payments to the Collaborative in order to ensure East Providence’s compliance with special education law and regulations.

Date: April 24, 2009

Travel of the Case

On January 12, 2009 counsel for the Northern Rhode Island Collaborative filed a request that the Commissioner convene an expedited hearing under R.I.G.L. 16-39-1. The hearing was requested to adjudicate a claim for unpaid tuition and to collect \$563,214.30, allegedly owed by the East Providence School Department. The letter on behalf of the Collaborative indicated that “all attempts to collect the money owed” had been unsuccessful and that the Collaborative had experienced continued difficulty in collecting tuition payments from the East Providence School Department. The tuition was for charges incurred in providing East Providence students who had been placed at the Collaborative with special education and related services. In the letter of appeal, the Collaborative requested that upon the Commissioner’s determination of the exact amount owed by the East Providence School Department, that he direct the General Treasurer to deduct this amount from East Providence’s state education aid and pay it directly to the Collaborative, as is authorized under R.I.G.L. 16-5-30.

The undersigned was designated to hear and decide this appeal on February 5, 2009. Hearing was initially scheduled for February 27, 2009, but was continued at the request of the parties to March 16, 2009. On that date, the parties agreed that a hearing on the merits should be deferred until the preliminary issue of the Commissioner’s jurisdiction to hear this matter was resolved. The parties agreed that by no later than March 30, 2009 the East Providence School Committee would file a Motion to Dismiss, the Collaborative would file its Objection, and both counsel would submit memoranda supporting their respective positions. The parties also agreed to seek an expedited decision on the Motion to Dismiss and did so on March 20, 2009. The Commissioner granted the request for an expedited ruling on the Motion to Dismiss on March 30, 2009. Counsels’ memoranda have been submitted and this decision has been expedited.

DECISION

The letter of appeal of the Northern Rhode Island Collaborative dated January 12, 2009 raises the issue of non-payment of tuition for special education students enrolled at the Collaborative by the East Providence School Committee. The amount of unpaid tuition is alleged to be \$563, 214.30. The Collaborative seeks a “hearing to establish that this tuition is owed” and further requests that the Commissioner order the General Treasurer to deduct this amount from East Providence’s state education aid and pay it directly to the Collaborative. The Collaborative also seeks to be reimbursed for legal fees incurred in collecting the unpaid tuition. (See letter of Appeal dated January 12, 2009).

As the East Providence School Committee correctly points out in its memorandum, this claim would call upon the Commissioner to adjudicate whether and, to what extent, the East Providence School Committee has breached a contract it has with a private entity- the Northern Rhode Island Collaborative¹. We infer that the contract in question² is for the provision of special education and

¹ It is interesting that R.I.G.L. 16-3.1-8 establishes the Northern Rhode Island Collaborative as a “nonprofit corporation”; The East Bay Educational Collaborative shares a similar corporate status under R.I.G.L. 16-3.1-10.

² The School Committee notes in its memorandum that no written or oral contract sets forth the terms and conditions by which the Committee is expected to make payment; in fact, no document defines when a payment is considered due, past due, untimely, or so untimely as to give rise to a claim for breach of contract. See memo of the School Committee at page 3.

related services from the Collaborative so that the School Committee can fulfill its obligations to these special education students who reside in East Providence but who cannot be provided with a free appropriate public education within the district. The very important educational purpose of this contract does not render the issue of whether the East Providence School Committee has failed to make the required payments in a timely manner an issue that “arises under any law relating to schools or education” (R.I.G.L. 16-39-1). The Commissioner’s authority to adjudicate disputes is limited under R.I.G.L. 16-39-1 and 16-39-2 to those that arise under a law relating to schools or education. The phrase “arise under” has been construed to require that the issue be controlled by education law and that resolution of the dispute require the construction or application of an educational statute or regulation. There would be an obvious benefit in extending the Commissioner’s jurisdiction to provide an administrative forum in which to hear this type of claim³; however, both the Board of Regents⁴ and the Rhode Island Supreme Court⁵ have cautioned against a broadening of the Commissioner’s jurisdiction. An extension of jurisdiction to commercial contract claims would add a “distracting burden” to the Commissioner’s office and involve him in a non-educational matter to which he brings no expertise or special insight⁶. Stated another way, the Commissioner brings no expertise to a determination of whether the term “net-30 days” was express or implied in the agreement between the parties to this contract.

We find that the precedent cited by the School Committee is applicable and constrains the Commissioner from venturing into the realm of commercial contracts, even though the contract is for special education services and one of the parties to the contract is a Rhode Island school committee. While it may be conceivable that a breach of contract claim could implicate a law related to schools or education⁷, this does not appear to be the case presented by this appeal. There is, for example, no claim that the educational services provided by the Collaborative were inadequate, that they did not comply with the requirements of state or federal law or that the Collaborative is somehow ineligible to receive payment because it is not an approved special education facility. In fact, the School Committee does not dispute that it owes money to the Collaborative for goods and services delivered from September 2008 through February 2009 (see memo of the School Committee at page 1). The sole issue presented is the timing of payment for the services rendered. This is an issue clearly outside of the Commissioner’s jurisdiction.

The second argument of the Collaborative is that R.I.G.L. 16-5-30 authorizes the Commissioner to intervene at any time tuition is owed by a debtor community (such as East Providence) so that, as in this case, nonpayment of tuition will be promptly remedied. We must observe, however, that the authority of the Commissioner under this statute is to “order the general treasurer to withhold the payment” of a community’s state aid when tuition is “owed by one community to another”. If and when the Commissioner determines that tuition is owed, an additional order may then issue “to deduct the amount owed from the debtor community’s school aid and to pay the community which is owed the

³ Particularly because of the adverse impact nonpayment of tuition has allegedly had on the ability of the Collaborative to continue to provide educational services to students from many Rhode Island communities.

⁴ See decision of the Board of Regents in LaPierre v. Cranston School Committee, May, 11, 1989.

⁵ See School Committee of the City of Providence v. Board of Regents for Education, 429 and 1297 (1981).

⁶ See Regents decision in LaPierre, supra, et page 2.

⁷ See the analysis of “arise under” at page 4 of Laidlaw Transit, Inc. v. South Kingstown School Committee, decision of the Commissioner dated April 6, 1992.

tuition”. In light of this explicit statutory language, we decline to interpret 16-5-30 to encompass the claim presented here. The entity claiming the tuition- the Northern Rhode Island Collaborative- is a nonprofit corporation as described under R.I.G.L. 16-3.1-8. Although that same statute authorizes “cooperative efforts” of the designated school committees to provide special education programs, there is no evidence presented that when the Collaborative provided such programs to these East Providence students, it operated as a “collection of school committees”⁸ rather than as a nonprofit corporation. In light of this, the Collaborative fails to qualify as a “community” even under a liberal construction of the word “community” as that term appears in R.I.G.L. 16-5-30. We find the statute inapplicable to provide a remedy for the Collaborative’s claim for unpaid tuition.

The Commissioner must, however, respond to the representations made in this dispute by counsel for the Collaborative that (a) monies owed by the East Providence School Committee impact the financial situation of the Collaborative to such extent that the future provision of educational services to these East Providence students is jeopardized⁹ and (b) it is quite possible that the Collaborative will be forced to disenroll all East Providence students because their tuitions have not been paid¹⁰. These representations call into question the continued ability of the East Providence School Committee to provide a free appropriate public education to students whose current Individualized Education Programs call for their placement at the Northern Rhode Island Collaborative. The imminent prospect of noncompliance with special education laws requires that the Commissioner act to ensure compliance if necessary. The traditional mechanism for such action is a “show cause” hearing under R.I.G.L. 16-5-30. At such hearing, the School Committee will be required to demonstrate that pending a resolution of the issue of unpaid tuitions in the appropriate forum, it can continue to provide special education and related services to those special education students currently enrolled at the Collaborative in conformity with their current Individualized Education Programs. Such hearing will be scheduled forthwith.

Kathleen S. Murray

APPROVED:

Peter McWalters, Commissioner

April 24, 2009
Date

⁸ As argued by the Collaborative at page 4 of its memo.

⁹ See page 4 of the memo of the Collaborative.

¹⁰ See letter of Attorney Andrew D. Henneous to Commissioner Peter McWalters dated March 20, 2009.